IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.Rev.Pet.No. 3470 of 2007()

C.C. NO. 634/2001 of JUDICIAL FIRST CLASS MAGISTRATE-II, PALAKKAD.
CRA NO. 455/2004 of ADDL. SESSIONS FAST TRACK COURT III, PALAKKAD

REVN. PETITIONER: REVISION PETITIONERS/APPELLANTS/ACCUSED NOS.2,3
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1. PRASAD,
S/O.KRISHNANKUTTY, CHAKKANIKKATTIL VEEDU,
MANIKKASSERY.

2. M.K.KUNCHU S/O.THEETHAPPAN,
MULLATHUPARAMBU,
MANIKKASSERY.

BY ADV. SRI.N.RAGHURAJ

RESPONDENTS: RESPONDENT/COMPLAINANT.

THE STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3470 OF 2007

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Dated this the 1st day of October, 2007.

ORDER

The accused Nos. 2 and 3 in C.C.No. 634 of 2001 on the file of Judicial First Class Magistrate-II, Palakkad charged for the offfences punishable under Sections 323, 324, 326 and 355 r/w Section 34 of the Indian Penal Code, challenge the conviction entered and sentence passed against them concurrently by the courts below for the offences punishable under Sections 323 and 324 IPC. There were altogether 4 accused. Since A1 is absconding, those who faced the trial are A1 to A4.

2. The case of the prosecution can be summarised as follows:

In prosecution of the common intention of A1 to A4 to voluntarily cause hurt of PW3, on 10.05.2001 at about 12.30 p.m. A1 took PW3 to the property belonging to one Jose at Keerippara and A1 to A4. A1 beat PW3 on both his arms and legs with a stick causing fracture to his left radius and simple injuries to his right arm and A2 struck PW3 with a chopper on the back of

his head causing injuries and A3 kicked PW3 with his footwear with intent to dishonour him and A4 flung him to the ground. The accused have thereby committed offences punishable under Sections 323, 326 and 355 r/w Section 34 IPC.

3. On the accused pleading not guilty to the charge framed against them by the trial court for the aforementioned offences and also for an offence punishable under Section 324 IPC, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 9 witnesses as PWs 1 to 9 and got marked 5 documents as Exts.P1 to P5 and three material objects as MOs 1 to 3.

4. After the close of the prosecution evidence, the accused were questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 31.08.2004 found A2 to A4 guilty of offences punishable under

Sections 323 and 324 IPC and sentenced them to rigorous imprisonment for three months and to pay a fine of Rs.500/- and on default to pay the fine, to suffer simple imprisonment for one month under Section 323 IPC and to rigorous imprisonment for six months and to pay a fine of Rs. 1000/- and on default to pay the fine, to suffer simple imprisonment for two months under Section 324 IPC. Even though the revision petitioner preferred an appeal before the Sessions Court, Palakkad as Crl. Appeal 455/2004, the Additional Sessions Judge, Fast Track III, Palakkad as per judgment dated 04.04.2007 dismissed the said appeal confirming the conviction entered and sentence passed against the revision petitioners. Hence this revision.

6. The learned counsel for the revision petitioner assailed the conviction against the revision petitioners on various grounds. No doubt, out of the four occurrence witnesses including PW3 (the injured) PWs 1 2 and 4 turned hostile to the prosecution. It is also true that there are a few contradictions omissions and exaggerations in the testimony of PW1 with regard to the overt acts attributed to each and every accused and the

location of the injuries sustained by him on his body. But, those contradictions, exaggerations, omissions and embellishments are bound to be there even in the testimony of the most truthful witness. As long as those are not in respect of the material particulars, courts do not give much value to them. The injuries sustained by PW1 are the following:

1. Lacerated wound 5x0.5 cm. bone deep on the vertex.
2. Contusion 6x6 cm. right fore-arm.
3. Contusion 5x5 cm. left fore arm.
4. Contusion 4x3 cm. on the skin.

7. The motive attributed to the accused is that A1 owed Rs.1000/- to PW3 and he had not paid the amount in spite of repeated demands. PW3 was called to the scene of the crime which is a paddy field on a promise to pay the money and was assaulted from there by the 4 accused persons. If PW3 was assailed by some other persons and not the accused, there is no reason why he should screen those real offenders and falsely implicate the accused. The trial court which had unique advantage of seeing the witnesses and assessing their credibility

was inclined to believe PW3. The lower appellate court has also accepted his testimony in proof of the overt acts attributed to the accused. In the absence of infirmity in the appreciation of evidence by the courts below, this Court sitting in the rarefied revisional jurisdiction will be loath to interfere with the conviction recorded. Hence, the conviction entered against the revision petitioners is confirmed.

8. What now survives for consideration is the adequacy or otherwise of the sentence. No doubt, the conduct of the revision petitioners and the co-accused was certainly reprehensible. But then, they do not deserve penal servitude by way of incarceration for the conviction recorded against him. I am of the view that the interests of justice will be adequately met by imposing a proper fine and directing them to compensate PW3, the injured. Notwithstanding the direction by the Apex Court in the decision reported in **Hari Kishan & State of Hariana v. Sukhbir Singh** (AIR 1988 SC 2127) interpreting Section 357(3) Cr.P.C. and directing that all criminal courts should liberally exercise the power under Section 357(3) Cr.P.C to re-compense

the victims of crimes, both the courts have been insensitive to the above mandate. The sentence imposed on the revision petitioners is accordingly set aside and both of them are sentenced to pay a fine of Rs.5000/- each under Section 324 and to pay a fine of Rs.4000/- under Section 323 IPC. On default of payment of fine of Rs.5000/-, the defaulting accused shall suffer simple imprisonment for two months. In the event of non payment of the fine of Rs.4000/- imposed under Section 324 IPC, the defaulting accused shall suffer simple imprisonment for one month. From out of the fine amount as an when realised, a sum of Rs.10,000/-(Rupees ten thousand only) shall be paid to PW3 as compensation under Section 357(3) Cr.P.C. The fine amount shall be remitted within 45 days from today.

In the result, the revision petition is disposed of confirming the conviction entered but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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